PHV Appl. CH
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U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
DEC - 5 2000
CLERK, U.S. DISTRICT COURT
By ________
Deputy

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

MALACO, INC.	:	
	:	
VERSUS	:	3-00CV2648-P
	:	
	:	CASE NO.
JOSEPH COOPER AND DOROTHY COSTANZO D/B/A GROUP HITMAKERS, INC. AND CLOSE UP PRODUCTIONS	:	

COMPLAINT FOR DAMAGES AND PRELIMINARY AND PERMANENT INJUNCTION FOR COPYRIGHT INFRINGEMENT

Malaco, Inc., with respect, represents:

PARTIES

1.

Plaintiff

Plaintiff, Malaco, Inc. ("Malaco"), is a Mississippi corporation with its principal place of business at 3023 W. Northside Drive, Jackson, Mississippi. Malaco Music is a trade name of Malaco.

2.

Defendants

Defendants are:

(A) Joseph Cooper, a resident of Dallas, Texas, doing business in Dallas, Texas as Group Hitmakers, Inc. and Close Up Production; and

(B) Dorothy Costanzo, a resident of Dallas, Texas who also is doing business in Dallas, Texas as Group Hitmakers, Inc. and Close Up Production;

JURISDICTION

3.

This action is brought under the Copyright Act, 17 U.S.C. §100 et. seq.. The conduct of Defendants constitutes infringement of Plaintiff's copyrights, as is more fully described herein.

4.

This Court has subject matter jurisdiction of this action under 28 U.S.C. §1331 and §1338.

VENUE

5.

Venue is proper in this district in that Defendants reside, and do in fact transact and do business within, the Northern District of Texas, and the claims herein arise in the Northern District of Texas where Defendants are manufacturing, distributing, promoting, offering to sell and/or selling the infringing work described below.

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BACKGROUND FACTS

6.

Malaco currently, and at all times relevant to this action has been, the owner of all right, title and interest in and to the copyrights in the words and music in the following musical compositions:

(A) Wall to Wall;

(B) Still Called the Blues;

(C) Just Because.

(Said musical compositions, together with the musical composition described in the following paragraph will collectively be referred to as the "Works.")

7.

Malaco also is currently, and at all times relevant to this action has been, the co-owner with Jalew Music of all right, title and interest in and to the copyright in the words and music in the musical composition "I'm Changing."

8.

On or about October 3, 2000, Malaco's applications for registration for each of the musical compositions listed in paragraphs 6 and 7 of this Complaint were received by the United States Copyright Office, together with two (2) copies of copyrighted cassette recordings "Wall to Wall" and "Still Called the Blues" which, together, contain the Works, and all fees for submitting those applications were paid by debits to Malaco's Deposit Account at the United States Copyright Office. (A copy of the registration applications for each Work, excluding the deposited cassettes, are attached to this Complaint as Exhibit 1.)

9.

In the mid-1980's Johnnie Taylor, who at that time was under an exclusive recording contract with Malaco, performed each of the Works at a live performance at the Longhorn Ballroom in Dallas, Texas.

10.

That live performance was captured on video tape made by or on behalf of Defendants Joseph Cooper, Dorothy Costanzo and others working in concert with them. (The videotape will be referred to hereinafter as the "Taylor Video.")

11.

The Taylor Video was made without the knowledge or consent of Malaco.

12.

Johnnie Taylor died on June 6, 2000.

13.

Since as least as early as August 1, 2000, Defendants have been reproducing, promoting, offering for sale, selling and distributing the Taylor Video under the title "Johnnie Taylor Live at The Longhorn Ballroom"; and unless enjoined by this Court they will continue to do so.

14.

Joseph Cooper is shown as the producer of the Taylor Video and Dorothy Costanzo is shown as the executive producer of the Taylor Video.

15.

By letter dated August 7, 2000, Malaco advised Defendants that the Taylor Video infringed Malaco's Works. In that letter Malaco demanded that Defendants immediately stop selling the Taylor Video and warned them that if they did not do so, legal action would be taken against them to protect Malaco's copyright rights.

16.

Notwithstanding Malaco's August 7, 2000 demand and warning, Defendants have continued to reproduce, promote, offer for sale, sell and distribute the Taylor Video to their benefit and to the detriment of Malaco.

17.

And, after receiving Malaco's demand and warning on October 16, 2000, Defendant Joseph Cooper, representing himself as "Close Up Productions," called Malaco seeking a video synchronization license for each of the Works. That request was denied.

18.

After that failed effort by Defendant Cooper to obtain a video synchronization license from Malaco for each of the Works, Defendants continued to infringe Malaco's copyrights in the Works by manufacturing, promoting, offering for sale, selling and distributing the Taylor Video, and they will continue to do so unless they are enjoined by this Court.

FIRST CLAIM FOR RELIEF - COPYRIGHT INFRINGEMENT, 17 U.S.C. §100, ET SEQ.

19.

Plaintiff realleges each and every allegation set forth in paragraphs 1 through 18, inclusive, and incorporates them herein by this reference.

20.

By its actions alleged above, Defendants have infringed Plaintiff's copyrights in and to the Works by producing, distributing and placing in the market the Taylor Video containing the copyrighted Works in violation of Malaco's copyrights in those Works, and Plaintiff shows upon information and belief that Defendants will continue such infringing activity unless enjoined from doing so by this Court.

21.

For the reasons alleged above, Plaintiff is entitled to a preliminary and permanent injunction restraining Defendants, their respective agents, and employees, and all persons acting in concert with them from producing, distributing and placing in the market the Taylor Video.

22.

Plaintiff further is entitled to recover from Defendant the damages it has sustained and will sustain as a result of Defendants' infringing conduct together with any gains, profits and advantages obtained by Defendants as a result of Defendants' acts of infringement alleged above. At present, the amount of such damages, gains, profits and advantages cannot be fully ascertained by Plaintiff.

PRAYER FOR RELIEF

23.

WHEREFORE, Plaintiff respectfully requests judgment against the Defendants granting Plaintiff the following relief:

(A) On all claims, a preliminary and permanent injunction issued by this Court restraining, enjoining and prohibiting Defendants, their agents, employees and any other individual or entity within their control or supervision or acting in concert with them from manufacturing, or causing the manufacture, or the selling, distributing, marketing or advertising for sale any Taylor Video;

(B) On all claims, an order from this Court compelling Defendants and their consignees to deliver up for destruction all Taylor Videos in Defendants' possession and control or under the control of their agents, employees, and consignees, or any other individual or entity within their control or supervision;

(C) On all claims, an order from this Court compelling Defendants to deliver the names and addresses, including the original records thereof, of all persons to whom any Taylor Video has been consigned, distributed and/or sold so that said merchandise also may be destroyed;

(D) On all claims, an order from this Court compelling the United States Marshall, or those under his supervision, to seize and impound the Taylor Video, as described herein, within their plain view, and to hold same until further order of this Court;

(E) On all claims, an award of damages in favor of Plaintiff and against Defendants, jointly and severally, the exact amount to be determined at a trial of this action, as a consequence of Defendants' infringement of Plaintiff's copyrights and legal interest thereon as allowed by law;

(F) On all claims, an award equal to all profits of the Defendants derived from the sale or other distribution of the Taylor Video and legal interest thereon as allowed by law; and

(G) Plaintiff also prays that the Court will otherwise grant such further relief as may be just and necessary under the circumstances, together with the costs of this action.

Respectfully submitted,

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